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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
2000 Biennial Regulatory Review of	)	CC Docket No. 99-216
Part 68 of the Commission's	)	
Rules and Regulations	)	

The American Council of Independent Laboratories (ACIL) respectfully requests that the Federal Communications Commission grant a Petition for Reconsideration in Docket 99-216. ACIL believes the Commission did not adequately review or examine the experience of accredited testing laboratories in arriving at its decision. Additionally, while retaining its rules regarding hearing aid compatibility and volume control and enforcement procedures for terminal equipment compliance, the FCC is casting away the protections afforded to the hearing-impaired population via third party compliance testing in favor of an untested Suppliers Declaration of Conformity schema.

ACIL, founded in 1937, is the national trade association representing independent commercial engineering and scientific laboratory, testing, consulting, product certifying, and R&D firms. ACIL has more than 350 members operating approximately 1,250 facilities throughout the U. S. and in several foreign countries. ACIL also serves as the Secretariat for the Telecommunication Certification Body (TCB) Council. The purpose of the Council is to provide: (1) a forum for periodic dialogue between the FCC and the TCBs, (2) facilitation of ongoing activities geared towards the improvement of TCB technical and administrative performance, (3) a forum for raising issues of concern to the FCC and vice versa, and (4) a common dissemination point for up-to-date FCC interpretations and rulings.

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List A B C D E

The Commission issued its Report and Order (R&O) in Docket 99-216 on January 24, 2001. There are three main components of the Commission R&O. First, the Commission transfers the responsibility for establishing technical criteria to the Administrative Council for Terminal Attachments (ACTA). Secondly, the Commission selected TIA and ATIS to serve as the joint sponsoring organization of the ACTA. Thirdly, the R&O completely eliminates the Commission's direct role in approving terminal equipment.

ACIL endorses the Commission's decision to transfer the responsibility for establishing technical criteria to the Administrative Council for Terminal Attachments. We agree that the privatization of the rule-making process will shift much of the regulatory detail of the FCC Part 68 Rules to the private sector and will likely accelerate responsiveness to the marketplace. ACIL notes that the Commission states that the Administrative Council "...will be a committee of interested industry experts that will...perform the functions of publishing technical criteria proposed by ANSI-accredited SDOs and...maintain a database of approved terminal equipment." [1] Later, the Commission states that "The purpose of the Administrative Council is to act as the clearing-house publishing technical criteria for terminal equipment developed by ANSI-accredited standards development organization."[2] Thus, it appears that the Commission holds great store by ANSI-accredited standards development organizations and their ability to establish technical criteria. It is baffling, however, that the issue of accreditation holds no place in the Commission's determination regarding the execution and application of the technical criteria.

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[1] *In the Matter of 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, CC Docket No. 99-216, FCC 00-400, Report and Order (rel. Dec. 21, 2000).

[2] Id. at paragraph 49.

The use of a Supplier's Declaration of Conformity in which testing can be performed by an unaccredited test lab raises concerns as to the competence and the work quality of the test lab as well as the test lab's interpretation of fail-safe criteria for compliance.

ACIL has been a strong advocate of laboratory accreditation because it is an international means of assessing the competence of a laboratory to give a measure of confidence to persons relying on the data produced by that laboratory in the specific area that has been assessed. If the test lab that performs measurements for the Part 68 accessibilities requirements, such as the Hearing-Aid Compatibility ("HAC") and Volume Control criteria, is unfamiliar with the testing or the interpretation of the criteria, manufacturers who self-declare under the SDOC scheme will actually market products that do not comply. The Commission in this same Docket has promised the disabled community that the accessibility requirements in Part 68 will not be modified or streamlined. Yet, the Commission significantly changed these requirements by allowing SDOC for products falling under the accessibilities requirements, notably volume control and HAC. Under the current system, there must be test data showing compliance being submitted to the FCC or to a third party certifier (the TCB); this process provides a level of scrutiny that is being eliminated under the SDOC scheme. It may be argued that the HAC magnetic field requirements have been around since 1989 and most handsets are now HAC compliant. However, the volume control requirements were only recently adopted on January 1, 2000. Many products are still being re-qualified to the criteria of volume control and initial testing shows that most telephones fail the volume control criteria and need to be redesigned. Moreover, testing for volume control requires specialized test equipment and testing competence that many test houses do not possess. If the test lab does not have the competence to ensure compliant test data and/or the product is self-declared compliant without being tested, then the bar for acceptance has been lowered to a dangerous level. *This lowering has a significant impact on the accessibility requirements.* Can the Commission really allow

such a degradation of standards while still asserting it is upholding its mandate to protect the public interest with respect to all access to communications networks?

The Commission asserts that "...harm to the network does not occur with any significant frequency."[3] The FCC attributes this to several factors, one of which is that "...responsible manufacturers have a vested interest in producing equipment that does not harm the network."[4] ACIL believes that vested interest is not a firm enough basis to ensure compliance.

Our economy is fraught with examples of companies with vested interests to produce the best products, yet practical applications revealed problems that technical criteria either did not foresee or could not foresee. Accredited testing labs provide the assurance that the products actually perform to the established technical criteria.

ACIL, in fact, takes further exception to the vested interest argument. ACIL queried some Part 68 test laboratories as to the percentage of equipment failing to meet the volume control requirements of Section 68.317 during the first round of testing. The lowest reported 22% while the highest reported 55%. These figures should reveal to the Commission that under the SDoC arrangement they adopt, these items will likely end up on the shelf of countless stores and in the hands of consumers. The hearing impaired community, to whom volume control can mean the difference between a completed call for emergency assistance or not, should not run such a high risk of relying on one of these non-compliant products.

This issue should be of particular import to the Commission with the advent of Phase 2 of the MRA regarding the EMC and the R&TTE sectors. RegTP (the German Regulating Authority for Telecommunication and Post empowered to enact the law that transposes the EMC Directive into German legislation) verifies Conformity Declarations regarding their formal correctness and logical plausibility. During the first six months of 1999, 3,582 items (750 product series) were subjected to EMC testing. Of those, 849 (23.7%) did not comply with the

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[3] Id., paragraph 21
[4] Id.

protection requirements. In 1998, of 6,121 items (1,261 product series) tested for EMC compliance, 1,373 units (22.5%) did not comply with the applicable standards.[5] While this is not an exact portrait of terminal equipment, we believe it is a clear indication that the "vested interest" of an SDoC environment may leave a lot to be desired. Similarly, the Commission has no data that even suggests what the percentage or volume of compliance of terminal equipment is under an SDoC arrangement. The SDoC arrangement will never ensure that different suppliers and manufacturers will understand and implement the technical requirements in the same manner as the FCC and the TCBs.

For the protection of the disabled community to whom the Commission has promised that all disabilities requirements in Part 68 will remain unchanged, ACIL requests that the FCC modify the Report and Order in one of two ways. The Commission can modify the R&O to require certification by the FCC or by a TCB of all products falling under the HAC and volume control requirements of Part 68, Sections 68.316 and 68.317. That would maintain the system currently in place that became operational last June.

As an alternative, the Commission can modify the R&O to put into place a system that allows manufacturers the choice to either (a) submit data and applications to TCBs for a Grant of Equipment Authorization, or (b) have testing performed at a facility accredited to ISO/IEC 17025 with the appropriate Part 68 scope of accreditation, issue a DoC, and affix a prescribed unique FCC label, which might include the lab code number (issued by the accrediting body) of the accredited test facility. (The above described closely resembles the DoC arrangement of Part 2 of the FCC's rules.) Additionally, the alternative would utilize the Commission's enhanced Enforcement Division that could pull samples from the market and test them for compliance. The Enforcement Division would also monitor the market surveillance activities of

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[5] "EMC Market Surveillance Conducted in Germany," TUV Rheinland World News, Nov/Dec 1999, p. 4.

the TCBs. Once the FCC is confident that there are no safety hazards to the public, the FCC could reevaluate a move toward SDoC.[6]

Respectfully submitted,

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[6] The first step might include items such as data only modems, professionally installed equipment, etc.